IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Bail Appl..No. 6106 of 2007()

CRIME NO. 381/07 OF PERAMBRA POLICE STATION

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PETITIONER/ACCUSED

DR. K.K.BABY, AGED 40 YEARS,
S/O LATE K.M.KURIAKOSE,
SENIOR VETERINARY SURGEON,
VETERINARY HOSPITAL, KUNNUMMAL,
P.O.VATTOLY, VATAKARA TALUK.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. THE STATION HOUSE OFFICER,
PERAMBRA POLICE STATION,
PERAMBRA, KOZHIKODE.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6106 of 2007

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Dated this the 9th day of October, 2007

O R D E R

Application for anticipatory bail. The petitioner, a Veterinary doctor, faces allegations of having committed offences punishable, inter alia, under Section 498A I.P.C.

2. The marriage took place on 1.1.1996. The couple are blessed with a child aged about 11 years. There is strain in the matrimony. It appears that the parties had agreed that they can separate, but that agreement has not been put into effect. During the pendency of that agreement the spouses are continuing to reside under the same roof. The allegation is that on 13.8.2007 insisting that the wife must give a discharge without the petitioner actually discharging the liability, she was abused and physically tortured. It resulted in injury to the ear drum. The victim went to the doctor on 19.8.2007. She was admitted in the hospital. Thereafter that the complaint has been filed before the police. Crime has been registered. Investigation is in progress. The petitioner apprehends imminent arrest.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. False and fanciful allegations are being raised against the petitioner by the defacto complainant on account of acrimony in the matrimony. Directions under Section 438 Cr.P.C. may be issued in favour of the petitioner, submits the counsel.

4. The learned Prosecutor opposes the application. He submits that the available materials clearly indicate that the petitioner had assaulted his wife with such cruelty that injury to the ear drum was caused.

5. In the nature of the disputes and contentions raised, the learned Prosecutor was requested to place the case diary before me after flagging the relevant pages. I have gone through the case diary. At this early stage of investigation, I shall carefully avoid any detailed discussion on merits about the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that I am satisfied that this is not a case where the extra ordinary equitable discretion under Section 438 Cr.P.C. can and ought to be invoked in favour of the petitioner. I am unable to find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioner. This I am satisfied is a fit case where the petitioner must resort

to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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